



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FSP/157921

PRELIMINARY RECITALS

Pursuant to a petition filed May 23, 2014, under Wis. Stat. § 46.985(6)(h), and Wis. Admin. Code § DHS 65.08, to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on July 15, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner no longer meets the level of care requirements for the Family Support Program effective June 10, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Beth Dornan
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County.

2. The Petitioner's diagnoses include Cerebral Palsy, visual impairments, thin Corpus Callosum, Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder (ADHD). He has challenges with impulsivity and intrusive behaviors. He requires support to help improve social skills and awareness of his behavior. He engages in oppositional defiance, has a short attention span and has poor focus.
3. Petitioner attends school in the Richfield School District. An IEP was developed in or about February, 2014 for the period of February 24, 2014 – February 23, 2015. The IEP addresses the Petitioner's Orthopedic needs, vision needs and speech and language needs. The IEP notes that the Petitioner was cooperative during the face-to-face testing portion. It also reports that he is inconsistent at times with following directions. He is reported as able to use good manners. It is further noted that he does not always maintain appropriate social/physical boundaries. He is noted to be able to listen and attend for at least 5 minutes and is able to inconsistently attend to a presentation for 15-20 minutes. It is also reported that he does well in sustaining interactions through exchanges, ends conversation appropriately, initiates topics of interest to others, negotiates simple plans/decisions and compromises with others. He is inconsistent in responding appropriately to social interactions by peers, listening while others speak and working cooperatively. He has difficulty waiting his turn, working/playing in a group without disrupting others and joining in with others. He handles frustration calmly and uses non-aggressive words/actions. He struggles with refraining from picking at his fingers and struggles with unexpected changes in routine. There is no specific plan or goal in the IEP for the Petitioner's behavior.
4. On January 13, 2014, an in-home visit and assessment was conducted by the agency. A functional screen report was completed on March 28, 2014. It was reported that the Petitioner requires assistance with bathing, dressing and grooming. He was also noted to need assistance with social competency.
5. On May 5, 2014, the agency issued a notice to the Petitioner that he does not meet the eligibility requirements for CLTS Medicaid Waiver and Family Support Program and his eligibility would end on June 10, 2014.
6. On May 23, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The Family Support Program provides individual services and supports to families that include a child with severe disabilities. It is administered by the Wisconsin Department of Health Services, pursuant to Wis. Stat. § 46.985. More detail is found in the relevant rule, Wis. Admin. Code ch. DHS 65. The Department has developed a policy handbook to assist in program administration, the Family Support Program Guidelines and Procedures (Manual), online at <http://www.dhs.wisconsin.gov/children/fsp/>.

The agency terminated the Petitioner's participation in the Children's Long-Term Support Waiver (CLTS), Family Support Program because it contends that he does not meet the level of care required to receive benefits. To qualify, a child must be part of one of the three waiver target groups: children with developmental disabilities, physical disabilities, and severe emotional disturbances (SED). Medicaid Waivers Manual, p II-4. The Petitioner has been receiving services because of severe emotional disturbance. To continue receiving services, he must demonstrate that he continues to meets the SED/psychiatric hospital level of care.

This level of care is described in Institutional Levels of Care, Children's Long Term Support Program in Wisconsin found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf. It requires the Petitioner to demonstrate a "long-term, severe mental health condition diagnosed by a licensed

psychologist or psychiatrist.” He must also demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community.” Id. p.8. The Level of Care manual goes onto state: “The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.” Id.

The Petitioner may be assigned the SED level of care if he meets all four of the following criteria:

1. The child has a Diagnosis of a mental health condition; and
2. The child’s mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific duration of time; and
3. The child is in need of Involvement with Service Systems related to mental health support; and
4. The child exhibits Severe Symptomology or Dangerous Behaviors at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Id.

The agency concedes that the Petitioner meets Criteria #1 and #2. The agency terminated the Petitioner’s participation based on its assertion that he does not meet Criteria #3.

The Level of Care Manual further describes the requirements for Criteria #3 as follows:

3. INVOLVEMENT WITH SERVICE SYSTEMS

The child must meet ONE of the following:

A. The child must currently receive or require services in connection with his or her mental health diagnosis (or symptoms) from at least TWO of the following five listed Service Systems.

OR

B. The child must currently receive or require services in connection with his or her mental health diagnosis (or symptoms) from only ONE of the following five listed Service Systems, if the intensity of that service is or reasonably may be expected to be THREE hours or more per week.

...

Service Systems:

1. Mental Health Services . . .
2. Child Protective Services . . .
3. Criminal Justice System . . .
4. Formal Service Plan for In-School Supports . . .
5. Substance Abuse Services

The Petitioner receives Mental Health Services with a psychiatrist every other week. These services do not amount to three hours or more per week. Also, the Petitioner has a Formal Services Plan for In-School Supports but the IEP does not contain emotional/behavioral disability programming or an active Behavioral Intervention Plan. His current IEP is based on orthopedic needs, vision needs and speech and language needs.

The Petitioner's mother testified on his behalf at the hearing. She stated that the Petitioner is not currently receiving as much psychotherapy as in the past because of multiple medical issues that have consumed his time. She also noted that he was once eligible for services under both the Physical Disability criteria as well as the SED criteria. He has come a long way physically and no longer meets the PD criteria.

The agency also noted that there is insufficient evidence to establish that the Petitioner currently meets Criteria #4. The Petitioner's mother testified that Petitioner displays oppositional defiance on a daily basis. A letter from the Petitioner's therapist indicates that therapy is helping the Petitioner to manage the challenges related to anxiety. However, she indicates he needs ongoing support to deal with impulsivity and intrusive behaviors, improve social skills, improve independence in self-care and awareness of his actions. He also continues to have problems related to hyperactivity, a short attention span and poor focus.

Based on the evidence presented, I must conclude that the Petitioner does not meet Criteria #3 and therefore is not eligible for the CLTS programs. This decision does not prohibit the Petitioner from re-applying for the programs if his circumstances change.

CONCLUSIONS OF LAW

The Petitioner is not eligible for CLTS programs, including the Family Support Program, because he does not meet the SED criteria.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

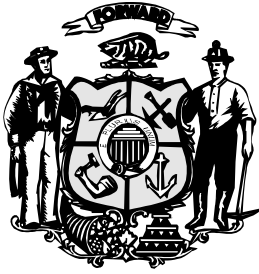
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of August, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 5, 2014.

Washington County Department of Social Services
Bureau of Long-Term Support